IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 367 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMRUTLAL PITAMBAR VADGAMA

Versus

GADHESARIA ASHOK NATHABHAI

Appearance:

MR DAKSHESH MEHTA for Appellants

M/S THAKKAR ASSOC. for Respondent

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 28/06/2001

ORAL JUDGEMENT

1. The present appellants - original plaintiffs filed Spl. Civil Suit No. 21 of 2000, in the Court of learned Civil Judge (SD) at Jamnagar, for specific performance of the contract stating that the defendant

respondent herein entered into a contract for sale of a suit property with the plaintiffs on 20th of May, 1998. As per the terms and conditions of the contract, the sale deed was to be executed within 90 days from the execution of the agreement. The sale deed accordingly was not executed, and then, the plaintiffs issued notice to the defendant - present respondent for the specific performance of the contract, which was replied by defendant. Thereafter, Spl. Civil Suit No. 21 of 2000 came to be filed.

2. Amongst other disputes main disputes in the Spl. Civil Suit are whether plaintiffs and/or defendant were ready and willing to perform their part of the contract, whether time was essence of the contract, and whether the contract stands cancelled by acquiescence, waiver or delay or latches.

3. In the above suit, the plaintiffs filed Application at Exh.5 to restrain the defendant from alienating or transferring the suit property which is subject matter of the contract. Learned Trial Judge granted order of status quo at the ad-interim stage, but after hearing the parties, vide his order dated 27th of June, 2000, Exh. 5 Application for interim injunction filed by the plaintiffs was rejected and, therefore, being aggrieved by this order, present Appeal is preferred by the original plaintiffs.

4. Learned Advocate Mr.D.B.Mehta for the appellants and learned Advocate Mr.D.M.Thakkar for Thakkar Associates for the respondents were heard at length.

5. With regard to the disputes which arise in the suit as mentioned above, it clearly appears that to resolve the disputes recording of the evidence is essentially necessary, and without recording of the evidence, those disputes at this juncture cannot be resolved without prejudicing any of the parties to the suit, and hence, though the learned Advocates have forcefully put up their contentions, it appears that the purpose of justice will be served if the suit itself is expedited after recording of due evidence. In this view of the matter, the learned Trial Court i.e. Civil Judge (SD) at Jamnagar is directed as under :

" The Trial Court i.e. learned Civil Judge (SD), at Jamnagar, shall try Spl. Civil Suit No. 21 of 2000 expeditiously and after recording of due evidence and after hearing the parties, shall dispose of Spl. Civil Suit so far as possible within two months but not later than three months in any case from the receipt of the writ of this Court or producing certified copy of this order by any of the parties, whichever is earlier. In the meanwhile, i.e. till the disposal of the suit, the parties shall maintain status quo in all respects with regard to the suit property. "

5. It is directed that both the parties to the suit shall cooperate with the Court in expeditious disposal, as directed above, of the Spl. Civil Suit No. 21 of 2000.

6. With the above order, this Appeal From Order No. 367 of 2000 is disposed of with no order as to costs.

(J.R. Vora, J.)

p.n.nair